

**EXHIBIT B**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
GOOLDEN, SARAH,	:	Docket #1:19-cv-06257-
	:	ALC-DCF
	:	
Plaintiff,	:	
- against -	:	
WARDAK, HAMED,	:	New York, New York
		March 15, 2022
Defendant.	:	<u>TELEPHONE CONFERENCE</u>
	:	

PROCEEDINGS BEFORE  
THE HONORABLE DEBRA C. FREEMAN,  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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For Defendant: LEX LUMINA PLLC  
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E X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-Direct</u>	<u>Re-Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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2 of his own prior counsel for any documents that they may  
3 have in their possession that preserved earlier records,  
4 and wouldn't they have to turn them over to Mr. Wardak if  
5 he asks for them?

6 MS. DECARLO: Absolutely. And I believe  
7 Mr. Wardak's counsel, based on letters he produced from  
8 December, made efforts to acquire these records. But from  
9 what I understand --

10 THE COURT: Well, what makes you think there are  
11 such records?

12 MS. DECARLO: Because Mr. Wardak represented to us  
13 that he had turned his phone over to his prior counsel. So  
14 then --

15 THE COURT: I'm sorry, the very phone that is  
16 supposedly lost was supposedly in the possession of  
17 counsel?

18 MS. DECARLO: That's correct.

19 THE COURT: Of prior counsel?

20 MS. DECARLO: Well, it was at one point, I  
21 believe, to extract data from the phone and then was  
22 returned to Mr. Wardak, who then subsequently lost it. And  
23 obviously, I'll let Mr. Wardak's counsel specify, you know,  
24 the exact timeline and what happened. But that's our  
25 understanding, anyway. So it's our understanding that at

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2 some point prior to his losing the phone, Mr. Wardak turned  
3 it over to his prior counsel. And, again, just to remind  
4 the Court, the parties have been involved on at least three  
5 other lawsuits in different venues. So there's been a  
6 history of the exchange of discovery on other actions. And  
7 the phone I believe was turned over to produce discovery in  
8 another lawsuit that the parties were involved in. And  
9 prior counsel has been, it seems, unresponsive to  
10 Mr. Millsaps' inquiries about --

11 THE COURT: Wait a second. Was discovery produced  
12 in that other case, discovery from the phone?

13 MS. DECARLO: I can't say. I think some of it  
14 was. I can't say for sure what was produced or what wasn't  
15 from the phone.

16 THE COURT: I'm sorry, who was in that other case?  
17 That was also Ms. Goolden's in the other case?

18 MS. DECARLO: That was a case in Florida, yes.

19 THE COURT: Okay, so Ms. Goolden is a party --

20 MS. DECARLO: And it was a federal court  
21 proceeding.

22 THE COURT: All right, Ms. Goolden was a party to  
23 that action and requested discovery in that action. And  
24 why would she not know if material was produced from that  
25 phone in that action?

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2 MS. DECARLO: We -- she can't -- first of all,  
3 it's not clear to us that any discovery was produced in the  
4 federal case in Florida. There was also a family court  
5 proceeding in New York Family Court, a family offense  
6 petition. And I believe some discovery was produced in  
7 that context. We don't know what was produced from the  
8 phone or what wasn't.

9 THE COURT: Well, how would you not know that?

10 MS. DECARLO: We don't -- because we -- well, we  
11 weren't -- first of all, we weren't attorneys on those  
12 cases.

13 THE COURT: No, but your client was a party. So  
14 if discovery was produced to her, why wouldn't she know if  
15 any early phone records were produced to her?

16 MS. DECARLO: Well, we certainly have some  
17 screenshots that were produced, but we don't have any way  
18 of knowing if that was the entirety of it or what, you  
19 know -- and the requests in those cases may have been  
20 different, narrower in scope -- I don't know -- from the  
21 requests that we've made here. But, I mean, the point is  
22 is we just want to know whether the prior counsel extracted  
23 data from the phone or not; and if they did, whether all of  
24 that data was -- is still in their possession or custody  
25 and can be produced. We just simply haven't --

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2 THE COURT: Let me hear -- let me hear from  
 3 Mr. Wardak's counsel on this.

4 MR. MILLSAPS: Your Honor, we did -- we have  
 5 followed up with all of Mr. Wardak's prior counsel. And  
 6 Mr. Wardak, as I explained to Ms. DeCarlo, believed that  
 7 his prior counsel had taken his phone sometime in 2019 and  
 8 extracted the ESI from it. You know, his prior counsel was  
 9 not very cooperative with us. We ended up having to send  
 10 them very strong demand letters for this information. And  
 11 they all sent over what they had in their files, and none  
 12 of them had the ESI that plaintiff is seeking here and that  
 13 frankly we would love to recover ourselves. It just  
 14 doesn't exist.

15 THE COURT: And what gives you the confidence that  
 16 they've turned over everything they had?

17 MR. MILLSAPS: Just based on their representations  
 18 and their -- you know, we sent them quite strong demand  
 19 letters, you know, essentially pointing out their own  
 20 liability here if they failed to turn over what they have.  
 21 I've spoken with each of them, and I've received, you know,  
 22 what they have represented is their entire file. They've  
 23 also explained to me -- each of them has explained to me  
 24 that they never extracted the ESI from Mr. Wardak's phone.

25 THE COURT: So Mr. Wardak's recollection of this

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3                   C E R T I F I C A T E  
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5                   I, Carole Ludwig, certify that the foregoing  
6 transcript of proceedings in the case of Goolden v. Wardak,  
7 Docket #19-cv-06257-ALC-DCF, was prepared using digital  
8 transcription software and is a true and accurate record of  
9 the proceedings.

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Signature Carole Ludwig

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Carole Ludwig

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Date: March 24, 2022

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